

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2000-322-C - ORDER NO. 2001-167

FEBRUARY 27, 2001

IN RE: Consumer Advocate for the State of South)	
Carolina,)	
Complainant/Petitioner)	
)	
vs.)	ORDER GRANTING
)	MOTION TO DISMISS
Horry Telephone Cooperative, Inc.)	
)	
Defendant/Respondent)	

This matter comes before the Public Service Commission of South Carolina (the Commission) pursuant to the oral arguments held on the Motion to Dismiss the Complaint of the Consumer Advocate for the State of South Carolina (the Consumer Advocate) filed as part of its answer to the complaint by the incumbent local exchange carrier (ILEC). Because of the reasoning stated below, we dismiss the complaint without prejudice.

The Consumer Advocate had requested the establishment of new dockets to review the rates, charges and earnings of the non-price cap-regulated ILEC named herein. The Consumer Advocate alleged that, as the result of its operations under the Interim LEC Fund process, the Company benefited from increased revenues, and earnings stability. According to the Consumer Advocate, due to these changes in revenues, the decreasing costs associated with the operation of telecommunications companies in general, diversification, and the length of time since the Company's last rate proceeding, it is now

appropriate to examine the Company's rates, charges, and earnings at this time. The Consumer Advocate also alleges that rates, charges, and earnings of every ILEC must be reviewed prior to allowing any rate change requests or withdrawals from the Universal Service Fund (USF).

The ILEC answers the complaint by stating that the complaint fails to state a cause of action against it, for several reasons. First, according to the ILEC, the complaint does not allege that any existing rates in effect for the Company are unjust, unreasonable, discriminatory, or in any way in violation of any provision of law. In addition, the complaint does not state that the Company is earning or has earned a rate of return in excess of its Commission-authorized maximum rate of return.

After hearing oral arguments on these matters, we hold that the Complaint of the Consumer Advocate is dismissed, without prejudice. We agree with the ILEC's point that the complaint fails to state a cause of action at this time, in that it does not allege that any existing rates in effect for the Company are unjust, unreasonable, discriminatory, or in any way in violation of any provision of law. Further, in the same vein, the complaint does not allege that the Company is earning or has earned a rate of return in excess of its Commission-authorized maximum rate of return. We believe that subjecting an ILEC to a full blown audit is arduous, especially when there is no allegation of overearning. We also do not believe that the fact that a Company's earnings have not been reviewed for a period of time gives any further credence to the Consumer Advocate's claims. In the absence of the allegation of any such matters, we do not believe that it is appropriate to proceed with the complaint matter at this time, and agree that the Consumer Advocate

has failed to state a cause of action against the ILEC named herein, and that the Complaint should be dismissed.

We do not, however, foreclose the Consumer Advocate from refiling his Complaint at a later date, and we do not necessarily hold that the Consumer Advocate's grounds for his present complaint would not state a cause of action in the future. We think that the telecommunications landscape is dramatically changing as this Order is written, and that the Interim-LEC Fund-USF continuum will contribute to this change. Obviously, the USF has not been implemented yet, and we believe that, if such earnings reviews were to be held, that they should be held after the USF is up and running, and we are able to see this Fund's effects on the telecommunications landscape. Further, as we go forward, the effects of costs and competition could more readily be examined as more data on these matters becomes available. At that point, it may become more reasonable to refile the Complaint, although we do not at this time express any opinion or make any finding on that point, or express any point of view on the merits of such future complaints.

In any event, the Consumer Advocate's complaint is dismissed, without prejudice.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

ATTEST:


Executive Director
(SEAL)


Chairman